

No. 00-0679

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF)
CITY OF COLUMBIA, ILLINOIS)
vs.)
ILLINOIS-AMERICAN WATER COMPANY)

DOCKET NO. 00-0679

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ILLINOIS COMMERCE COMMISSION
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CITY OF COLUMBIA, ILLINOIS - BRIEF

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CITY OF COLUMBIA, ILLINOIS)	
)	
vs.)	
)	DOCKET NO.
ILLINOIS-AMERICAN WATER COMPANY)	00-0679
)	
Complaint as to providing services outside)	
of the utility's certificated service area in)	
Columbia, Illinois.)	

STATEMENT OF FACTS

The parties to this proceeding have stipulated as follows:

1. Illinois-American Water Company ("IAWC") has an existing 12-inch water main on the south side of Illinois State Route 158 between Quarry Road and Centerville Road.
2. Three residential water customers who desire service reside on the north side of Illinois State Route 158 between Quarry Road and Centerville Road.
3. The area certificated to Illinois-American Water Company in Docket No. 96-0353 provides a certificate of public convenience and necessity to IAWC to provide water service to and including the north right-of-way line of Illinois State Route 158.
4. IAWC has bored two (2) house service lines off of its 12-inch water main on the south side of Illinois State Route 158 to provide service to the John and Becky Dawson family located at 625 State Route 158 and the Byron and Ilo Boyle family located at 631 State Route 158.
5. The service connection for the Dawson residence and the Boyle residence is within IAWC's certificated area.

6. The physical residences of the John Dawson family and Byron Boyle family served by the connections are located outside of the area certificated to IAWC.

7. The properties of the John Dawson family and the Byron Boyle family about the right-of-way of Illinois State Route 158.

8. The service lines owned by the John Dawson family and the Byron Boyle family do not cross property owned by any other party.

IAWC/Columbia Joint Exhibit "1". Tr. p.21, L.13.

It is the position of the City of Columbia, Illinois ("Columbia" or the "City") in this case that IAWC, as a public utility, is not permitted to provide water service outside its Illinois Commerce Commission certificated area and that the point of usage rather than the point of connection ("metering point") determines whether the utility is providing water service outside of its certificated area. IAWC, on the other hand, takes the position that IAWC, as a public utility subject to regulation by the Illinois Commerce Commission, is allowed to serve customers who occupy property which is contiguous to or adjoins IAWC's certificated service area provided the metering point (or point of connection for service) is located within IAWC's certificated area, notwithstanding the water sold is transported and used outside of the utility's certificated area. Tr. p.92, L.15, p.95, L.1, p.99, L.1, p.99, L.21, p.100, L.12, and p.100, L.19.

IAWC's stranded costs for the water service they are providing to the Dawson residence at 625 State Route No. 158 is \$2,335.69 and IAWC's stranded

costs for the water service they are providing to the Boyle residence at 613 State Route No. 158 is \$1,778.48. Tr. p.88, L.11, p.89, L.15 - 22. The estimated cost for IAWC to bore under Highway 158 and install a service line to provide water service for the Fulford residence is \$1,778.00. Tr. p.90, L.4-7. So far, Fulford has not applied to IAWC for IAWC water service. Tr. p.90, L.13-18.

The estimated cost for Columbia to construct Phase III of its water service project to provide water service for the Boyle, Dawson and Fulford residences located on the north side of Highway Route 158 is \$13,818.00 (if the City uses an outside contractor to install the line) and \$8,290.80 (if the City Maintenance Department does the installations). Tr. p.33, L.2 and p.33, L.11-19.

Columbia's Mayor Schneider prefers to provide the water service using Columbia's planned Phase III waterline extension the City intended to construct and install to provide water service to the three (3) residences on the north side of State Route 158. Tr. p.65, L.7-18.

It would be cheaper for the City to pay IAWC for its stranded costs for the Dawson and Boyle water services and then the City take over the three (3) customers located on the north side of State Route 158 than for the City to construct Phase III of its waterline extension project to provide water service to those three (3) customers. Tr. p.47, L.12-19 and p.48, L.2 - p.49, L.2 ; p.71, L.7-13 and p.76, L.11-17.

By January, 2003, Columbia will be entitled to receive up to one million (1,000,000) gallons per day (1.00 GPD) off the IAWC, Millstadt to Waterloo twelve inch (12") diameter waterline to provide retail water service to customers in the subject region. Tr. p.55, L.5-9. The corporate limits of the City are located within one thousand (1,000) feet of the Fulford, Dawson and Boyle properties and the City expects to annex them in the near future. Tr. p.65, L.19 - p.66, L.12.

Mayor Schneider wants to be sure that fire service is available for the subject Boyle, Dawson and Fulford residences located on the north side of State Route 158. Tr. p.47, L.20 - p.48, L.12 and p.49, L.1-6. Fire service would be available to the three (3) residences off Columbia's six (6) inch diameter Phase II waterline extension if Columbia took over the IAWC installed services for the Dawson and Boyle residences. Tr. p.66, L.21 - p.67, L.8 and p.70, L.18 - p.71, L.6.

While originally the City did not intend to reimburse IAWC for its stranded costs of providing the Dawson and Boyle water services, the City is now willing to do so and immediately take over the service for those two (2) customers. Tr. p.48, L.13-20, p.53, L.3-16, p.58, L.9-13, p.62, L.2-21 and p.66, L.13-20.

Columbia is a sale for resale customer of the Metro-East Municipal Joint Action Water Agency ("MEMJAWA") and MEMJAWA is a sale for resale customer of IAWC. Tr. p.54, L.9-12. If the City reimbursed IAWC for its stranded costs and then served the Dawson and Boyle residences from the IAWC installed service connections, the City would expect to pay the special service tariff rate IAWC

charges MEMJAWA rather than for the City to pay IAWC its general tariff rate that IAWC charges its other customers in its Southern District. Tr. p.49, L.21 - p.50, L.16 and p.51, L.6-9.

Should the Illinois Commerce Commission ("ICC") hold that IAWC is serving the two (2) customers on the north side of Highway 158 outside of IAWC's certificated service area and without legal authority to do so, IAWC may decide to apply for certification to serve those customers. Tr. p.96, L.10 - p.98, L.3.

Besides the Dawson residence at 625 State Route 158 and the Boyle residence at 631 State Route 158, IAWC has three (3) other retail customers in Millstadt, Illinois which have their water service connections located within IAWC's certificated area but which have their point of usage outside IAWC's certificated area. Tr. p.91, L.9 - p.92, L.14.

The City's biggest concern in this docket is the precedent that will be set if the Commission looks to point of connection instead of point of usage or consumption to determine if water service is being provided outside a public utility's certificated service area. Tr. p.67, L.9-21. The City made its plans for providing regional water service based upon the ICC certification in ICC Docket No. 96-0353 (which is the certification involved in determining whether IAWC is providing water service outside of its service area in this docket). Tr. p.67, L.18-21.

STATEMENT OF LAW

- I. The right of a public utility to operate in a given territory does not depend upon whether individual customers prefer its service over that of a competing utility. A public utility cannot lawfully serve territory not embraced within its certificate of public convenience and necessity. Palmyra Telephone Co. v. Modesto Telephone Co., (1929) 336 Ill. 158, 163, 167 N.E. 860, 862; Illinois Power Company v. Walter, (5th Dist., 1966) 75 Ill.App.2d 432, 437, 220 N.E.2d 755, 758; 220 ILCS 5/8-406(b).
- II In enforcing a service area agreement between an electric service supplier under the Illinois Electric Supplier's Act, for a public utility to sell electricity to a customer at a metering point located within the supplier's own service area for transportation by the customer to a point of usage or consumption outside the utility's service area, is a violation of the utility's service area agreement. It is the place that the electricity is being used and not the point of connection (or metering point) that determines if the utility is operating within or outside of its authorized territory. Central Illinois Public Service v. Illinois Commerce Commission, (4th Dist., 1990) 202 Ill.App.3d 567, 573, 560 N.E.2d 363, 367, 148 Ill.Dec. 61, 65).

III. While electric service providers fall under regulation by the Electric Supplier's Act, and the Electric Supplier's Act allows for service area agreements between competing electric suppliers in order to define their service areas, the Public Utilities Act allows and provides that an electric service supplier subject to regulation by the Electric Supplier's Act may apply for and obtain a certificate of public convenience and necessity under Section 8-406 of the Public Utilities Act as to any territory it has received an authorization to serve from the Illinois Commerce Commission under the Electric Supplier's Act. Such certificate shall have the same force and effect as certificates of public convenience and necessity issued under Section 8-406 of the Public Utilities Act to water companies or other public utilities that are not subject to regulation under the Electric Supplier's Act. 220 ILCS 5/8-406(e).

ARGUMENT

The right of public utility to operate in a given territory does not depend upon whether individual customers prefer its service over that of a competing utility. A public utility cannot lawfully serve territory not embraced within its certificate of public convenience and necessity. Palmyra Telephone Company v. Modesto Telephone Company, (1929) 336 Ill. 158, 163, 167 N.E. 860, 862; Illinois Power Company v. Walter, (5th Dist., 1966) 75 Ill.App.2d 432, 437, 220 N.E.2d 755, 758, 220 ILCS 5/8-406(b).

It is the point of usage or consumption and not the point of connection that determines whether a public utility regulated by the Public Utilities Act is providing service outside its certificated area. Central Illinois Public Service Company v. Illinois Commerce Commission, (4th Dist., 1990), 202 Ill.App.3d 567, 573, 560 N.E.2d 363, 367, 148 Ill.Dec. 61, 65; appeal denied, 136 Ill.2d 542, 567 N.E.2d 329, 153 Ill.Dec. 371. While IAWC will argue that a court decision under the Electric Supplier's Act is not precedent for public utilities that are subject to regulation under the Public Utilities Act (Act 5 of Chapter 220 of the Illinois Compiled Statutes) rather than subject to regulation under the Electric Supplier's Act (Act 30 of Chapter 220 of the Illinois Compiled Statutes), the City submits that it is. This is especially the case since an electric service supplier who obtains Illinois Commerce Commission

approval to serve a designated territory under the Electric Supplier's Act (Act 5 of Chapter 220 of the Illinois Compiled Statutes) may obtain a certificate of public convenience and necessity to serve that territory under the Public Utilities Act (Act 5 of Chapter 220 of the Illinois Compiled Statutes), the same as utilities subject to regulation under the Public Utilities Act. (220 ILCS 5/8-406(e)). Therefore, the decision of the Court in the Central Illinois Public Service Company case, id, should be dispositive that IAWC is serving the Dawson and the Boyle residences on the north side of State Route 158 outside IAWC's certification.

There is no dispute that IAWC is providing water service for the Dawson and the Boyle residences for use and consumption outside IAWC's certification territory, notwithstanding the delivery (or metering points) are within IAWC's certificated territory. See IAWC/Columbia Joint Exhibit #1, Tr. p.21, L.13. There is also no dispute that since 1993 IAWC has been doing the same thing for three (3) other customers in Millstadt, Illinois. Tr. p.91, L.9 - p.92, L.10.

It is IAWC's interpretation of the law that IAWC is allowed to serve customers on properties which adjoin and are contiguous to IAWC certificated territory, provided the point of water service connection is within the IAWC certificated territory, without IAWC being required to obtain additional certification from the Illinois Commerce Commission. IAWC believes it is only when a customer's service extension would cross an intervening property in order to connect to an IAWC water main within IAWC's service area, that additional Illinois Commerce Commission

certification would be required. Tr. p.92, L.15 - p. 93, L.20, p.95, L.1-19, p.99, L.1-10 and p.100, L.19 - p.101, L.3.

If we are to accept IAWC's interpretation of the law on defining certification right-to-serve then a three hundred (300) acre tract of property sought to be developed as a planned unit development that has a one foot (1') contiguity to a Commerce Commission certificated boundary would be permitted to receive water service from the certificated water purveyor without any additional certification from the regulatory authority. Surely this is not the intent of the law?

While there are no Public Utilities Act cases exactly on point, it behooves this agency to borrow from the wisdom of the Electric Supplier's Act cases and to hold that IAWC in serving the Dawson and Boyle residences is providing water service outside IAWC's certification.

Assuming for purposes of argument that the ICC will so hold, it then devolves upon this commission to determine the appropriate remedy for the situation created by IAWC's infraction. Complainant, the City of Columbia, Illinois, submits the appropriate cure should be for the City to pay to IAWC its stranded costs for the water service for the Dawson and Boyle residences with the City to be allowed to service these customers at the established metering points at the MEMJAWA tariff rates. The reasons for this are:

(1) If IAWC had not made the Dawson and Boyle water service connections without first seeking a temporary certificate or declaratory judgment,

Columbia would have provided the services for these customers, within six (6) months, by Phase III of its regional water service plan. Tr. p.36, L.16-21, p.42, L.2-8, p.73, L.11, p.74, L.14 and p.78, L.15 - p.79, L.7.

(2) If IAWC is allowed to continue to serve these customers or Columbia is allowed to serve them but at IAWC's general service tariff rates, these two (2) customers will not be treated the same as their neighbors in Columbia's regional water service area with regard to cost of water service and IAWC will be unjustly enriched by the wrong IAWC has committed.

(3) In designing Phase III of its regional water service plan, the City justifiably relied upon the ICC certification for IAWC in ICC docket No. 96-0353. Tr. p.67, L.18-21. The City has expended time, money, and effort in implementing that plan (design engineering is done, Tr. p.71, L.14-17, the IEPA permit has been obtained, Tr. p.71, L.21 - p.72, L.1). Columbia will be unjustly detrimented and IAWC will be unjustly benefitted if the ICC allows IAWC to continue to serve these customers.

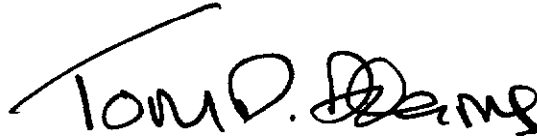
(4) By January, 2003, Columbia will be entitled to receive up to one million (1,000,000) gallons per day (1.00 GPD) off the IAWC, Millstadt to Waterloo twelve inch (12") diameter waterline to provide retail water service to customers in the subject region. Tr. p.55, L.5-9. The corporate limits of the City are located within one thousand (1,000) feet of the Fulford, Dawson and Boyle properties and the City expects to annex them in the near future. Tr. p.65, L.19 - p.66, L.12.

In the event that this agency rules in favor of Columbia in this matter and grants the relief described above, should IAWC fail and refuse to allow the connections to its twelve inch (12") diameter water main pursuant to its Sale for Resale Agreement with MEMJAWA (Tr. P.51, L.1 - p,52, L.14), then and in that event, the City submits the appropriate remedy would be for Columbia to be allowed to serve the North side of State Route 158 customers using Phase III of its Regional Water Service Plan, IAWC be granted a temporary certificate to serve those customers pending the Columbia hook-up and IAWC be denied the right to recover its stranded cost.

CONCLUSION

The record in this case-heard and taken-establishes that IAWC has been serving retail customers outside its certificated area-both at the subject location on State Route 158 and in Millstadt, Illinois. This Commission cannot continence the same. In crafting a remedy that will serve the public convenience and necessity, this agency should allow Columbia to service the Boyle, Dawson, and Fulford residences at MEMJAWA's special service tariff rates, with IAWC to be reimbursed by Columbia for its stranded costs. Alternatively, in the event IAWC will not agree to the additional service connections to IAWC's twelve inch (12") diameter water main for the Boyle and Dawson residences, Columbia should be allowed to serve these customers off of its Regional Plan Phase III service line, IAWC should be granted a temporary permit to serve until the Columbia hook-up, and IAWC should be denied its stranded costs. In the future, IAWC should be required to obtain modification or extension of its service area certification should it seek to serve any customers adjoining its certificated service area.

Respectively submitted,

A handwritten signature in black ink, appearing to read "Tom D. Adams". The signature is written in a cursive, flowing style with a long horizontal stroke at the beginning.

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CITY OF COLUMBIA, ILLINOIS

vs.

ILLINOIS-AMERICAN WATER COMPANY

Complaint as to providing services outside
of the utility's certificated service area in
Columbia, Illinois.

DOCKET NO.
00-0679

NOTICE OF FILING

TO: Attached Service List

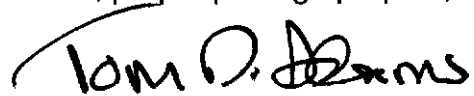
PLEASE TAKE NOTICE that on the 10th day of April, 2001, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Initial Brief of the Complainant, City of Columbia, Illinois, copies of which are hereby served upon you.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Filing, together with the Initial Brief of the Complainant, City of Columbia, Illinois, was served upon the parties on the attached service list by electronic mail and first class mail, proper postage prepaid, on the 10th day of April, 2001.



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THIS IS TO CERTIFY that copies of the CITY OF COLUMBIA, ILLINOIS - MAIN
BRIEF has been served upon the appropriate parties of record by first class mail on the
10th day of April, 2001, to wit:

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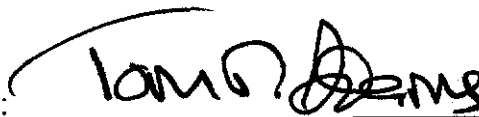
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